THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.26396 OF 2007

Date: 11.12.2007

Between:

Samayamathula Prasada Rao and others

. . .Petitioners

AND

Government of Andhra Pradesh and others

. . .Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.26396 OF 2007

ORDER:

This writ petition is filed for a writ of mandamus to declare the action of respondent No.2 in seeking to declare the lands belonging to the petitioners through notification, dated 09.11.2007 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') as illegal and arbitrary.

The only grievance expressed by the petitioners in the writ petition is that while seeking to acquire the lands of the petitioners for construction of Railway Over Bridge at Tuni, the respondents invoked the urgency clause under Section 17(4) of the Act and dispensed with enquiry under Section 5A of the Act.

Sri V.V.N.Narayana Rao, learned counsel for the petitioners submitted that the petitioners are all small farmers and that there is an alternative alignment which, if implemented by constructing the bridge through the said alignment, the acquisition of properties of the poor people can be avoided. He further submitted that if the respondents have provided an opportunity to the petitioners by holding an enquiry under Section 5A of the Act, they would have convinced the respondents to change the location of the proposed Railway Over Bridge.

The learned Assistant Government Pleader for Land Acquisition says that since acquisition of the land is for an important public purpose, namely, construction of Railway Over Bridge, the

respondents are justified in dispensing with the enquiry under Section 5A of the Act.

I have carefully considered the respective submissions of the learned counsel.

As held in **Hindustan Petroleum Corporation Limited v. Darius Shapur Chenai and others**[1], Section 5A of the Act is the heart of the provisions of the Act and that the said provision affords a valuable opportunity to the owners of the lands to put forth their objections to the suitability of the land and desirability of the proposed acquisition.

In my considered view, construction of Railway Over Bridge is not of that emergent nature which warrants invocation of urgency clause, which would inevitably deny a valuable opportunity to the owners of the land to raise their objections against the proposed acquisition. In this view of the matter, I declare the portion of notification, dated 09.11.2007 issued under Section 4(1) of the Act, in which urgency clause is invoked and enquiry under Section 5A of the Act is dispensed with, as invalid. The respondents shall hold enquiry under Section 5A of the Act by giving an opportunity of filing objections and personal hearing to the petitioners before seeking to proceed further in pursuance of notification, dated 09.11.2007. Ordered accordingly.

C.V.NAGARJUNA REDDY, J

11th DECEMBER, 2007

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[1] 2005(7) SCC 627